BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI

AFSCME, LOCAL 410,	)	
	)	
Petitioner,	)	
	)	
v.	)	Public Case No. UC 94-043
	)	(Cross Reference RD 94-027
CITY OF ST. LOUIS	)	and 79-058)
DEPARTMENT OF CORRECTIONS	)	
MEDIUM SECURITY INSTITUTION	)	
	)	
Respondent.	)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing of a unit clarification petition by AFSCME, Local 410 (hereinafter referred to as the Union). The Union is the certified bargaining representative for employees in certain job classifications in the St. Louis Department of Corrections. Specifically, the Union represents all corrections officers, cooks and custodial workers at the Medium Security Institution. In this case, the Union seeks a determination from the Board whether the registered nurses and program specialists at the Medium Security Institution should be included in the aforementioned bargaining unit. A hearing on the matter was held on October 11, 1994, in St. Louis, Missouri, at which representatives of the Union and the City were present. The case was heard by State Board of Mediation Chairman Francis Brady, employee member Joel Rosenblit and employer member Lois Vander Waerdt. At the hearing the parties were given full opportunity to present evidence. Afterwards, the parties filed briefs. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The City's Department of Corrections operates a jail known as the Medium Security Institution (hereinafter referred to as MSI). The Union is currently the certified bargaining representative for a bargaining unit consisting of all correction officers, cooks, and custodial workers at MSI. The record indicates that at the time of the hearing there were no cooks or custodial workers working at MSI. Thus, the only employees currently in the bargaining unit at MSI are the corrections officers (hereinafter referred to as COs). In addition to the CO's though, three registered nurses (hereinafter referred to as RNs) and three program specialists also work at MSI.

The COs are responsible for monitoring the inmates at MSI. They spend all their work time doing this. They primarily work inside the secured or confined areas of the institution. The COs are supervised by the chief of security and the institution's superintendent. The COs work three shifts: 6:30 am to 3 p.m., 2:30 to 11 p.m. and 10:30 p.m. to 7 a.m. About 35 to 40 COs are on duty on each shift.

Two of the RNs are supervised by Princess Keaton, the third RN. All three of these employees are classified as RN II's. Keaton oversees the medical department, makes appointments, assists the doctors with patients and attends management meetings. She assigns work and overtime to employees and does the scheduling. Keaton wrote the list of daily work assignments which the other two RNs perform. The work assignments for both are identical. These two RNs provide nursing services and perform medical tasks. Specifically, they dispense medication and chart it after it is given, treat all residents needing medical care and respond to medical emergencies. They spend all their work time performing these routine medical tasks. Neither of the two RNs working under Keaton are empowered to change their daily work assignments. They primarily work outside the confinement area, but they do enter the lock-in area and

the maximum confinement area to provide medical services. Keaton works 6:30 am to 3 p.m., RN Richard White works 1:00 to 9:30 p.m., and the other RN works 3:00 to 11:30 p.m.

The two RNs under Keaton have not hired, fired, disciplined, promoted, evaluated, or transferred anyone, nor are they empowered to recommend any of those actions. Additionally, the two RNs under Keaton do not assign work or overtime to employees or schedule employees. No employees report to the two RNs under Keaton. The two RNs under Keaton do not formulate policies for MSI or attend management meetings.

All three of the program specialists are classified as program specialist I's. The City employs program specialist II's, but none work at MSI. Each of the three program specialists involved here deals with a different program carried out at MSI. One works with the alternative sentencing program, one with the electronic surveillance program and the third with volunteer programs. The alternative sentencing program ensures that individuals sentenced to perform public service fulfill the court's order. The electronic surveillance program is a house arrest program that is used to ease prison overcrowding. Under this program, individuals are released from the institution, confined to their home and monitored electronically. The volunteer programs coordinator, as the name implies, coordinates the activities of volunteers providing education, counseling and religious services to inmates. The program specialist who works with the alternative sentencing program is supervised by the work program supervisor and the other two program specialists are supervised by the correctional program manager, Carl Gilmore. The program specialist who oversees the electronic surveillance program works with two aides and the program specialist who oversees the alternative sentencing program works with one clerical employee. The program

specialist who oversees volunteer programs does not work with employees, but obviously works with volunteers. All the program specialists attend weekly staff meetings. They have an office outside the secured area.

The program specialists are not empowered to hire, fire, discipline, promote, evaluate or transfer employees on their own volition and have not done so. Gilmore testified that the program specialists have input into hiring, can recommend promotions and transfers, and can initiate disciplinary action. However, the record does not contain any instances where a program specialist has recommended the promotion or transfer of a particular person or initiated disciplinary action. With regard to hirings, the record indicates that program specialists have sat in on job interviews to fill vacant program specialist aide positions with Gilmore and the commissioner of corrections. When they did so, it is unclear whether the program specialists asked the applicant questions. The record does not contain any specific instances where a program specialist recommended the hiring of a particular person. Additionally, in those instances where a program specialist sat in on interviews, the program specialist did not decide who to hire; the commissioner of corrections did. It is not necessary to the City's hiring process that the program specialists be involved in the interviewing process.

The aides to the program specialists have regularly assigned duties. If a special assignment is made to an aide, it would go through Gilmore. The aides to the program specialists do not attend the weekly staff meetings which the program specialists attend.

The City has two pay schedules known as "G" and "M". The "G" schedule is the general pay schedule and the "M" schedule is the manager pay schedule. The COs, RNs and program specialists are all on the "G" pay scale. The CO IIs are at level 13, and RN IIs are at level 19, the program specialists Is are at level 13, and the program specialist aides are at levels 9 and 10. There is a 5% differential between pay grades.

The maximum salary for a CO is about two-thirds that of a RN's maximum salary. The CO's, RNs and program specialists all receive the same benefits. The COs, RNs and program specialists follow the same procedures manual and are subject to the same weapons, drug and attendance policies.

Different education levels are needed to become RNs, program specialists and COs. The RNs need specialized training in nursing, the program specialists need an Associate degree and some college hours in criminal justice or a related field, and the COs need a high school degree or equivalency.

CONCLUSIONS OF LAW

The Union has petitioned this Board to include the RNs and the program specialists at MSI in the existing bargaining unit. At present, the RNs and program specialists are not part of that unit. The City opposes their inclusion in the existing unit on several grounds. First, the City contends, contrary to the Union, that those positions are supervisory and/or managerial. Second, the City contends, contrary to the Union, that those positions do not share a community of interest with the other employees in the existing bargaining unit, namely the COs.

The contentions posed above require that the following issues be resolved: 1) are the RNs and program specialists in question supervisory or managerial employees; and 2) if not, do the RNs and program specialists have a community of interest with the other employees in the existing bargaining unit.

Attention is focused first on the alleged supervisory status of the RNs and program specialists. Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the

courts have carved out such an exclusion.[1] This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise.

In making this call, the Board has historically considered the following factors:

(1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees;

(2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;

(3) The number of employees supervised, and the number of actual persons exercising greater, similar or lesser authority over the same employees;

(4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees;

(5) Whether the supervisor is primarily supervising an activity or primarily supervising employees; and

(6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.[2]

We will apply them here as well. Not all of these criteria need to be present for a position to be found supervisory. Rather, in each case the inquiry is whether these criteria are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.[3]

Applying these criteria to the RNs, we find that Keaton meets this supervisory test but that the other two RNs do not. Our analysis follows.

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[1] See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976).

[2] See, for example, City of Sikeston, Case No. R87-012 (SBM 1987).

[3] See, for example, Monroe Manor Nursing Home District, d/b/a Monroe Manor, Case No. R91-016 (SBM 1991).

With regard to Keaton, it is noted at the outset that the Union concedes she is a supervisor. Given the Union's position, her status as a supervisor is undisputed. Additionally, we are satisfied that the record supports this conclusion.

However, the fact that Keaton, who is an RN II, is a supervisor does not mean that everyone in that same classification is also a supervisor. This is because it is the duties of the employees involved, not their job title, that is determinative.

The record indicates there are major differences between the work Keaton does and the work done by the two RNs under her. To begin with, it is clear that the two RNs under Keaton have not recommended or done any of the procedures listed in factor (1) above. Specifically, they have not hired, fired, or disciplined anyone, or promoted, evaluated or transferred anyone. Additionally, they have not effectively recommended any of the foregoing.

Next, it is noted that no employees report to the two RNs under Keaton. As a result, it is apparent that these RNs do not supervise anyone in the traditional sense. Since these RNs do not supervise anyone it stands to reason that they do not qualify for the supervisory exclusion.

In so finding, we are aware that the City considers White to be in charge of the Medical Department when Keaton is gone. Be that as it may, this does not make him a supervisor. We are satisfied that on those occasions when Keaton is gone, White simply oversees the work activity performed in the department--not the employees themselves.

We therefore hold that the two RNs working under Keaton do not exercise sufficient supervisory authority in such combination and degree to make them supervisors.

Applying the aforementioned criteria to the program specialists, we find they do not meet this supervisory test either. To begin with, none of the program specialists can do any of the procedures listed in factor (1) above on their own volition. Specifically, they have not hired, fired or disciplined anyone, or promoted, evaluated or transferred anyone. While Gilmore testified that the program specialists can recommend promotions, transfers and disciplinary action, the record does not contain a single instance where that has happened. As a result, this claim has simply not been substantiated. With regard to hiring, the record indicates that program specialists have been invited to participate in interviewing job applicants to fill vacant program aide positions. After doing so though, the program specialists did not recommend a particular person be hired. It is therefore apparent that program specialists are not an indispensable part of the Employer's hiring process.

Next, it is certainly noteworthy that two of the program specialists have aides and/or clericals who work with them. However, the program specialists do not supervise these employees; these employees are supervised and evaluated by either Gilmore or the work program supervisor.

Given the foregoing, we find that the three program specialists do not exercise sufficient supervisory authority in such combination and degree to make them supervisors.

Having so found, attention is now turned to the claimed managerial status of the two RNs under Keaton and the three program specialists. Managerial employees, like supervisory employees, are not specifically excluded from the coverage of the Missouri Public Sector Labor Law. Nevertheless, case law from this Board and the courts have carved out such an exclusion.[4]

[4] See Department of Social Services, Case No. 83-012 (SBM 1984) and City of St. Louis, Lambert Airport, Case No. AC-94-001 (SBM 1994).

In deciding whether the position in question is managerial, this Board has historically considered the degree to which the individual participates in the formulation, determination and effectuation of management policy. We will do so here as well.

There is absolutely nothing in the record that indicates that the two RNs under Keaton participate in the formulation, determination and effectuation of management policy. Their job is to provide nursing services and perform medical tasks. In doing so, they follow established procedures. They did not formulate any of these procedures on their own, nor did they attend any management meetings where these policies were formulated. Instead, these policies and procedures were formulated and written by those with authority over them. It is therefore held that the two RNs under Keaton are not managerial employees.

Similarly, nothing in the record establishes that the three program specialists participate in formulating, determining and effectuating the Employer's management policy. Simply put, all those decisions are made by others. Consequently, we find that the three program specialists at MSI are not managerial employees either.

We now turn to the question of whether the two RNs under Keaton and the three program specialists should be included in the existing bargaining unit. The Union contends that they should, while the Employer disputes this assertion.

The Missouri Public Sector Labor Law defines an appropriate bargaining unit as:

> A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.[5]

In determining whether employees have a community of interest, this Board has consistently looked to the following factors:

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[5] Section 105.525 RSMo. 1986.

1. Similarity in scale or manner of determining earnings.

2. Similarity in employment benefits, hours or work and other terms and conditions of employment.

3. Similarity in the kind of work performed.

4. Similarity in the qualifications, skills and training of employees.

5. Frequency of contact or interchange among the employees.

6. Geographic proximity.

7. Continuity or integration of production processes.

8. Common supervision and determination of labor-relations policy.

9. Relationship to the administrative organization of the employer.

10. History of collective bargaining.

11. Extent of union organization. [6]

The Board uses these factors to determine whether a community of interest exists. No one factor in and of itself is determinative in making this call. Instead, all are weighed together.

After applying the above stated factors to the facts involved here, we find that there is a sufficient community of interest between the two RNs under Keaton and the three program specialists to include them in the existing bargaining unit. Our rationale follows.

Our Findings of Fact acknowledge certain differences between the COs, RNs and program specialists in terms of their job duties, salary, education, supervision, and work area. These differences are as follows. To begin with, each of the three classifications has different job duties. The COs monitor inmates, the RNs perform medical tasks and the program specialists work with different programs carried out at

[6] AFSCME, MO State Council 72 v. Department of Corrections and Human Service, Case No. 83-002 (SBM 1984).

MSI. Next, with regard to salary, the RNs are paid more than the COs and program specialists. Specifically, the RNs can make up to one-third more than the COs. Next, with regard to education, all three classifications have different requirements. The RNs need specialized training in nursing, the program specialists need an Associate degree and some college hours in criminal justice or a related field, and the COs need a high school degree or equivalency. Next, with regard to supervision, all three groups have different supervisors. The COs are supervised by the chief of security and the institution's superintendent, the RNs by Keaton, and the program specialists by the correctional program manager (Gilmore) and the work program supervisor. Finally, with regard to work area, the COs primarily work inside the secured or confined areas of the institution, while the RNs and program specialists primarily work outside the confinement area.

That said, there are some similarities between COs, RNs and program specialists in terms of their benefits and working conditions, work location, and interaction. These similarities are as follows. To begin with, they all receive the same benefits and are subject to the same policies and procedures manual. With regard to salary, the CO IIs and the program specialists involved here are at the same pay grade, namely level 13. Next, in terms of work location, they all work at the same site, namely MSI. Finally, in working together, they interact with each other in the following ways. The COs are on duty at all times the RNs and program specialists are on duty. The RNs, like the COs, have to enter the lock-in area and the maximum confinement or solitary area. The COs are present when the RNs dispense medication and attend to medical emergencies.

If the differences and similarities noted above were tallied up, the column listing the differences between the three classifications would be longer than the column listing their similarities. Numerically speaking then, there are more differences between the COs, RNs and program specialists than similarities. That being so, it would certainly be easy for us to find that since there are numerically more differences than similarities, the RNs and the program specialists do not have a community of interest with COs.

However, if we were to do so (namely find that the RNs and program specialists did not have a community of interest with the COs), that would not be the end of the matter. Far from it. This is because earlier in this decision we found that the RNs under Keaton and the program specialists are neither supervisory nor managerial employees. Given this finding, they are entitled to representation. This representation can either be in the existing bargaining unit or a new unit. If we did not put the RNs under Keaton and the program specialists in the existing unit, those same employees could legally turn around and file a new petition with us seeking their own bargaining unit or units. If that happened, this Employer would potentially have to deal with two additional bargaining units with just several employees in each. We do not want to create the potential for that to happen here. Consequently, we have decided that in the interest of avoiding the proliferation of bargaining units at MSI, it is appropriate to expand the existing bargaining unit to include the RNs and the program specialists. We therefore find there is a sufficient community of interest between the RNs and the program specialists to include them in the existing bargaining unit with the COs.

In so finding, we again acknowledge that there are indeed differences between the COs, RNs and program specialists. Be that as it may, there were also differences between the COs, cooks, and custodial workers and yet they were included together in the original bargaining unit. The original composition of the unit is noteworthy because it

illustrates that sometimes dissimilar occupations and classifications are grouped together in order to avoid the proliferation of bargaining units. That was no doubt the case when the COs, cooks, and custodial workers were included together in the original bargaining unit. It is also the basis underlying our decision here to include the RNs under Keaton and the program specialists in the existing bargaining unit with the COs.

ORDER GRANTING CLARIFICATION OF BARGAINING UNIT

Based on the above noted rationale, it is held that: 1) Princess Keaton is a supervisory employee and therefore is excluded from any bargaining unit; 2) the two RNs under Keaton are neither supervisory nor managerial employees, so they are eligible for inclusion in a bargaining unit; 3) the three program specialists at MSI are neither supervisory nor managerial employees, so they too are eligible for inclusion in a bargaining unit; and 4) the two RNs under Keaton and the three program specialists are included in the existing bargaining unit at MSI.

The certification granted to the Union in Case 79-058 is therefore amended to reflect the inclusion in that unit of the two RNs under Keaton and the program specialists.

Signed this 3rd day of February, 1995.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Francis R. Brady
Francis Brady, Chairman

/s/ Joel Rosenblit
Joel Rosenblit, Employee Member

/s/ Lois Vander Waerdt
Lois Vander Waerdt, Employer Member